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In re Application of	:	OFFICE OF PETITIONS
Ellenberg et al.	:	
Application No. 09/624,439	:	DECISION ON PETITION
Filed: 07/24/2000	:	
Attorney Docket No. 072271.0118	:	

This is a decision on the petition under 37 CFR 1.181, filed January 11, 2008, to withdraw the holding of abandonment.

On May 10, 2007, the Office mailed a non-final Office action, which set a three-month shortened statutory period to reply. In the apparent absence of a timely reply, the Office mailed a Notice of Abandonment on November 19, 2007.

Applicants aver that the Office issued the Notice of Abandonment in error because applicants filed a timely and proper reply to the non-final Office action, accompanied by a request for an extension of time for response within the third month (and fee), as evidenced by the Acknowledgment Receipt dated November 13, 2007. Therefore, applicants request that the Office withdraw the holding of abandonment.

Specifically, applicants assert:

A non-final Office Action was mailed on May 10, 2007. The six-month final deadline to file a response was Saturday, November 10, 2007. Thus, the due date fell on a weekend. On Monday, November 12, 2007, the United States Patent and Trademark Office was closed in observance of Veterans Day. On Tuesday, November 13, 2007, Applicant electronically filed an Amendment in response to the Office Action and a request for a three (3) month extension of time. The Notice of Abandonment was mailed on November 19, 2007.

...

Therefore, under 37 C.F.R. § 1.7(a), a response filed on the next business day -- Tuesday, November 13, 2007 -- would be timely. As evidenced by the attached Acknowledgement Receipt, Applicant electronically filed the Amendment and a request for a three (3) month extension on November 13, 2007. Therefore, the Amendment was timely filed under 37 C.F.R. § 1.7(a) and the holding of abandonment is improper. ...

Petition dated 01/11/08, pp. 1-2. Copies of these documents accompany the petition.

Pursuant to 37 CFR 1.7:

(a) Whenever periods of time are specified in this part in days, calendar days are intended. When the day, or the last day fixed by statute or by or under this part for taking any action or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday, or on a Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding business day which is not a Saturday, Sunday, or a Federal holiday.

The Office concurs with applicants' assertions. The last day fixed by statute for filing the reply to the non-final Office action of May 10, 2007, with a request for an extension of time for response within the third month (and fee) fell on Saturday, November 10, 2007. Therefore, applicants could file the reply and the request for an extension of time for response on the next succeeding business, which was not a Saturday, Sunday, or a Federal Holiday. The Office notes that the legal public holiday for Veterans Day fell on Sunday, November 11, 2007. However, the U.S. Office of Personnel Management Operating Status and Schedule for 2007, states that Monday, November 12, 2007, was treated as a federal holiday in observance of Veterans Day pursuant to 5 U.S.C. 6103. Accordingly, applicants' reply, accompanied by the request for an extension of time for response within the third month (and fee), were timely filed on Tuesday, November 13, 2007, the next succeeding business day.

In view thereof, the petition is **granted**. The Office mailed the Notice of Abandonment in error. The holding of abandonment is withdrawn and the application is restored to pending status in light of the timely submission of the reply on November 13, 2007.

This application is being referred to Technology Center AU 3694 for appropriate action of the amendment filed November 13, 2007.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3211.

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